

SPECIAL CIVIL APPLICATIONS NO. 8006/95, 8075/95,
9936/95 & 1886/96

Date of decision: 12.4.1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(12.4.1996)

Mr. Gaurang H. Bhatt for the petitioners in all the petitions.

Mr. R. A. Misra for respondents in all the petitions.

C.A.V. JUDGMENT:

As all these four special civil applications are related to each other and have been filed by the husband and wife, who both are in the service of the Panchayat, I considered proper to dispose of them by a common judgment.

Heard the learned counsel for the parties.

The facts which are relevant for the purpose of deciding these four special civil applications are as follows:

Sureshnath Ishwarnath Goswami and Devyaniben Kundangiri Goswami are husband and wife. Both are primary school teachers in the schools run by the District Panchayat, Junagadh. Special civil application No.8006/95 initially was filed jointly by the husband and wife. They have challenged the order dated 7-9-1995 under which both of them have been placed under suspension pending investigation of a criminal case registered against them for the offence punishable under Section 504, 506(2), 184 and 114 of IPC. It appears that at subsequent stage the petitioners have thought it proper to file separate writ petitions in the matter of suspension and accordingly another writ petition being special civil application No.8075 of 1995 has been filed on behalf of the husband. The facts of these two special civil applications reveal that suspension is also considered necessary of the petitioners in contemplation of the departmental inquiry. On 19-10-1995 in both these special civil applications rule was issued and made returnable on 11-3-1996. The Court granted ad-interim relief in favour of the petitioners, staying the order of suspension. The Court passed a speaking order and in the light of the allegations levelled against the petitioners observed that the court is prima facie satisfied that even if these allegations are proved, such action may not result into major punishment. After recording this finding the Court granted ad-interim relief as stated earlier.

2. The respondents felt aggrieved of the order of the interim relief made in these two special civil applications and filed letters patent appeals No.1092/95 and 1093/95. Both the letters patent appeals were dismissed by the Division Bench of this Court under order dated 9-2-1996 with cost of Rs.1000/- each.

3. After hearing the learned counsel for the parties, I am satisfied that the matter stands finally decided at the interim stage when this court prima facie found that even if the allegations made against the petitioners are proved it may not entail major penalty. Now, at this stage it is considered to be in larger interest of both the parties as

well as in the interest of justice that these two special civil applications may be disposed of with the directions to the respondents to complete the departmental enquiries against the petitioners within reasonable time, say, six months from the date of receipt of the certified copy of the order.

4. So far as the criminal case is concerned it will take its own course and time and I do not consider it proper to issue any direction to the criminal court to decide the same at an early date. But the suspension of the petitioners was not considered to be reasonable by this Court though at the ad-interim stage and that order has been confirmed by the Division Bench. In these facts and circumstances of the case no useful purpose will be served if the suspension is continued, pending investigation or trial of the criminal case.

5. In the result both the special civil applications, namely, 8006/95 and 8075/95, are allowed in terms of the interim order as confirmed by the Division Bench, and the orders of suspension of the petitioners dated 7-9-1995 are quashed and set aside. The respondents shall complete the departmental enquiry against the petitioners within a period of six months from the receipt of the certified copy of the order. Rule made absolute in the aforesaid terms in special civil applications No.8006/95 and 8075/95. No order as to costs.

Special civil application No.9936/95:

6. The petitioner herein, Devyaniben Kundangiri Goswami, filed the petition praying for direction to the respondents to treat and accept her options of loose medical allowance, exercised by her and submitted by registered post on 26-3-1993 and 16-3-1994 for the years 1993-94 and 1994-95 respectively. She has further prayed for the directions to the respondents to pay her salary with loose medical allowance for the period from 1-7-1994 to 16-4-1995. She has prayed further more reliefs which are ancillary or consequential to main relief. The petitioner has come up with the case that on 26-3-1993, she has opted for loose medical allowance for the years 1993-94. She sent her option by registered post to the respondents. The petitioner was on maternity leave for the period from 26-3-1993 to 6-5-1993. The petitioner admitted that this leave was not sanctioned because of miscarriage of delivery. She has gone on maternity leave from 6-9-1993 to 17-10-1993 but again this leave was not sanctioned because of miscarriage of delivery. The last maternity leave has been prayed for the period from 24-12-1994 to 23-3-1995 and this

time she has delivered a female child. Due to sickness she extended her leave up to 15-4-1995. The petitioner opted for the loose medical allowance for the year 1994-95 and this option was sent by her by registered post to the respondents. The same option has been made by the petitioner for the year 1995-96 and the option was sent by registered post to the respondents on 6-3-1995. The respondents, as per the petitioner's case, have treated the above option of the petitioner for the years 1993-94 and 1994-95 for the fixed medical allowance as option for loose medical allowance was not received. The fixed medical allowance is to be made to the employees by the respondents @ Rs.75/- per month and the amount is paid monthly along with the salary. The petitioner stated that when she realised that she had been paid fixed medical allowance of Rs.900/- for the year 1993-94, she had immediately repaid the amount by demand draft No.046961 dated 22-11-1994 to the respondents. The petitioner has further stated that for the year 1994-95 the petitioner was paid her salary along with the loose medical allowance for the months of April, May and June, 1994 but thereafter she has not been paid the salary. From time to time representations were made by the petitioner regarding payment of salary to her for the period from 1-7-1994 with loose medical allowance. When despite representations nothing has been done, the petitioner, along with her husband, who is also an employee of the District Panchayat personally met Shri Vijan Kalaria, T.D.O., on 2-9-1995 and made representation in this behalf. The grievance of the petitioner is that rather than resolving her grievance of nonpayment of her salary, a police complaint has been filed against both the petitioner and her husband on 2-9-1995 for offence under section 504, 506(2), 186 and 114 IPC. The petitioner and her husband were placed under suspension and the order of suspension was challenged by filing two separate special civil applications, reference to which has already been made in the earlier part of this judgment, which have been allowed. The present petition has been filed by the petitioner for payment of salary for the period from 1-7-1994 to 16-4-1995 with loose medical allowance.

Special civil application No.1886/96:

7. The petitioner herein, Shri Sureshnath Ishwarnath Goswami, is a teacher in the District Panchayat, and he prayed for quashing the order of respondent No.2 dated 30-1-1995 (annexure-C) under which recovery of Rs.10,696.60 ps. was ordered to be made from him. Further prayers have been made in the writ petition for sanction of the medical bills aggregating Rs.5344/- and treat the option of the petitioner of loose medical allowance for the years 1993-94,

1994-95 and 1995-96. The petitioner has given out the facts which have been given by his wife in her writ petition, i.e. special civil application No.9936 of 1995 and as such I do not consider it proper to repeat the same here again. Only the facts which are in addition to those need to be mentioned briefly. The petitioner opted, as per his case, for the years 1993-94, 1994-95, 1995-96 for loose medical allowance and he sent his option by registered post on 26-3-1993, 16-3-1994 and 6-3-1995. It is the case of the respondents that the option sent by the petitioner and his wife for the aforesaid years for loose medical allowance were not received by them.

8. On 30-1-1995 respondent No.2 issued an order impugned in this writ petition for recovery of Rs.10,696.60 ps being the amount of medical allowance received by the petitioner during the years 1992-93, 1993-94 and 1994-95. The order of respondent No. 2 dated 30-3-1994 allowing the petitioner the loose medical allowance for the year 1994-95 has also been cancelled under this order. It is found that this order was issued on the basis of the misrepresentation made by the petitioner in respect of the option of the spouse. The petitioner sent a notice through the advocate on 8-6-1995 for the purpose of payment / sanction of medical bills of Rs.5344/-. Thereafter the petitioner and his wife approached the T.D.O. for redressal of their grievance, and for their alleged criminal act a criminal case has been lodged, the details of which have already been taken from the writ petition filed by the petitioner's wife. On 18-9-1995 respondent No.2 directed the Principal, Pay Centre School, Aadri to recover the amount of Rs.10,696.60 ps. from the LTC 1992-95 and the salary of the petitioner from the month of January, 1995 as per order dated 30-4-1995 passed in pursuance of the order dated 30-1-1995. Hence the present petition.

9. I have gone through the order dated 30-1-1995. The authority has recorded its finding of the fact that the option which has been alleged to be sent by the registered post for loose medical allowance for the year 1993-94 was not received. The learned counsel for the petitioner has failed to successfully challenge this finding of the fact. For the year 1992-93 the wife of the petitioner had received the fixed medical allowance. Similarly for the year 1993-94 the wife of the petitioner received the fixed medical allowance. It is not in dispute that if the husband and wife both are in the service of the District Panchayat then the option should be considered the same for both of them. When wife has opted for the fixed medical allowance for the year 1993-94, the authority has not committed any mistake to treat the option of the petitioner for the fixed medical

allowance for the year 1993-94. It is a case where the petitioner has, by making misrepresentation, got the order dated 30-3-1994 for loose medical allowance and in the facts of this case the T.D.O. has not committed any illegality in passing of the order dated 30-1-1995. The learned counsel for the petitioner admitted that the postal receipt under which the options were sent for the disputed years are not available. He has come up with the case that those postal receipts were lost in the month of March, 1996 when the petitioner was returning back to Mangrol from Ahmedabad. This special civil application has been filed by the petitioner on 8-3-1996. The affidavit-in- support of this special civil application was affirmed by the petitioner on 29-2-1996. On 29-2-1996 when this special civil application was prepared and the affidavit has been affirmed, the petitioner admittedly possessed the postal receipt but has chosen not to file these material documents along with the petition. Withholding of these material documents from the court and then coming up with the story that those documents have been lost during the travelling from Ahmedabad to Mangrole creates suspicion in the mind of the court. This dispute was going on and it has assumed seriousness also. It was expected from the petitioner to file those documents before this Court but the petitioner withheld these documents, and it is difficult to understand. Withholding of these documents from this court, though on 29-2-1996 the petitioner was in possession thereof compels the Court draw an adverse inference and the petitioner cannot overcome this inference merely on the basis of the story of loss of documents which is difficult to believe. Even if the petitioner did not want to file these documents then he should have left these documents with his advocate to be shown to the court at the time of hearing by this court of this writ petition but that too has also not been done. The petitioner should have given the number of the postal receipt as well as the name of the post office from where he sent those registered letters which has also not been done. Same is the case of another petitioner, his wife. In that case also the postal certificates have not been produced though the statement has been made that the option has been sent by registered post. The respondents have disputed and denied these facts. In view of this defence it was necessary for the petitioners to file those documents rather than to keep them with them and come with the theory of loss of the documents. So far as the petitioner's wife is concerned, no explanation has been given for withholding these material documents. In the case of the petitioner's wife the respondents have committed no illegality in taking her option for fixed medical allowance for the years 1993-94. Apart from this the petitioner's wife was paid fixed medical allowance of this year and she accepted the

same. Only at later stage she returned this amount. In the presence of these facts now the story of option of loose medical allowance for these years by the husband seems to be manufactured and which is further confirmed from the fact that both the petitioners have not filed the postal receipts before this Court.

10. In the facts and circumstances of the present case I am satisfied that the petitioner's husband has misrepresented the facts and has been able to get favourable order dated 30-3-1994. This order is to be cancelled by the respondent T.D.O. The respondent has not committed any illegality in ordering for recovery of the amount of the medical allowance received by the petitioners on the basis of their option for loose medical allowance. The petitioners are only entitled to the fixed medical allowance for the years in dispute as they have failed to establish to the satisfaction of this court that they have opted for loose medical allowance for these years and option has been sent by them by registered post.

11. In the result both these special civil applications fail and the same are dismissed with costs of Rs.2000/each. It is open to the respondents to recover the said amount from the salary of the petitioners, may be in reasonable monthly installments. So far as the other grievances of the petitioner-wife regarding withholding of her salary, it is expected from the respondents that they will now consider the matter and will pass appropriate orders and in case nothing is adverse against her, the salary may be paid with fixed medical allowance within reasonable time. Notice discharged. No costs.